4-219

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 963.

THE UNITED STATES, APPELLANTS,

vs.

FREDERICK PHISTERER.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 11, 1877

SUPREME COURT OF THE UNITED STATES.

No. 963.

THE UNITED STATES, APPELLANTS,

vs.

FREDERICK PHISTERER.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

FREDERICK PHISTERER
v.
THE UNITED STATES. } No. 10883. Filed Dec. 16, 1875. J. R.

To the honorable Court of Claims:

The petition of Frederick Phisterer, late an officer in the United States Army. From the 15th day of February, A. D. 1866, to the 4th day of August, A. D. 1870, the claimant was a captain of infantry in the Army of the United States. During a part of said period of time one-half of the pay and allowances due to the claimant as such officer from the United States was withheld for the alleged reason that he had been ordered home to await orders, at his own request, and was therefore virtually on leave of absence; and during the same time certain mileage and commutations of fuel and quarters due to the claimant from the United States were also unlawfully withheld.

The claimant being unable to obtain a sufficient examination of the papers of the War Department relating thereto, cannot set forth with precision the amounts so withheld, and therefore prays the court to request the honorable Secretary of War to furnish a statement of the same.

No assignment or transfer of said claim, or of any part thereof, or of any interest therein, has been made, and no action thereon has been had by Congress or any of the Departments, except as herein stated. The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

He is a citizen of the United States, a resident of Columbus, in the county of Franklin and State of Ohio, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided or abetted or given encouragement to rebellion against said Government. He demands judgment against the United States for such sum as shall be found due to him by reason of the premises.

B. F. GRAFTON,
Claimant's Attorney.

DISTRICT OF COLUMBIA, *ss:*

B. F. Grafton, having been duly sworn, says that he is the attorney of the claimant named in the foregoing petition, and believes the facts therein stated to be true.

Sworn and subscribed before me by B. F. Grafton, this 15th day of December, A. D. 1875.

[SEAL.]

I. L. JOHNSON,
U. S. Commissioner for the District of Columbia.

2 United States Court of Claims.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

Claimant's petition.—Filed May 18, 1876.

To the honorable Court of Claims:

The claimant was a captain of infantry, in the Army of the United States, from Jan'y 31, 1870, to July 15, 1870. Upon the consolida-

tion of the Army, under the act of March 3, 1869, he was ordered home to await orders, and thereupon left his post at Ft. Bridger, W. T., and proceeded to his home at New York City, and remained awaiting orders from Jan'y 31, 1869, until July 15, 1870, both days inclusive.

During said period of time the defendant furnished no quarters, and had no public quarters which could be furnished, to the claimant at said New York, and the claimant was entitled under section 37 of the act of July 28, 1866, and sections 1068, 1080, and 1081, of the Army Regulations, to commutations for $10\frac{23}{24}$ cords of wood, at the rate of $12 per cord, amounting to $131.50; also to commutations for quarters for 5 months and 15 days at the rate of $54 per month, amounting to $295. He was also entitled to mileage, from his said post to his said home, for 2,305 miles, at ten cents per mile, amounting to $230.50. No part of said commutations of fuel and quarters, or of said mileage, has ever been paid, and of the pay and allowances due the claimant for the same period of time the sum of $361 has also been unlawfully withheld. There is due to the claimant from the defendant, by reason of the premises, the sum of $1,018. No action has been had by any of the Executive Departments, or by Congress, on this claim, of which the claimant is the sole owner; and no assignment or transfer of the same, or of any part thereof or interest therein, has ever been made. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to rebellion against the said Government; and he is justly entitled to the amount of this claim, after allowing all just credits and offsets.

The claimant demands judgment against the United States for the sum of $1,018.

PAINE & GRAFTON,
Claimant's Attorneys.

THE DISTRICT OF COLUMBIA, *ss:*

Benjamin F. Grafton, having been duly sworn, says that he is one of the attorneys of the claimant named in the foregoing petition, and believes the facts as stated in said petition to be true.

B. F. GRAFTON.

Sworn and subscribed before me by B. F. Grafton, this 18 day of May, 1876.

JOHN RANDOLPH,
Asst. Clerk Ct. Claims.

Claimant's post-office address, Columbus, Ohio.
Post-office address of claimant's attorney, Washington, D. C.

3 In the Court of Claims of the United States, December term, A. D. 1875.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein, and, not confessing the same or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that

the United States are indebted to the said claimant in the sum of one thousand and eighteen dollars, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

Filed June 26, 1876.

4 In the Court of Claims of the United States, December term, 1875.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

Plea.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain suit against the defendants, for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

Filed June 26, 1876.

5 United States Court of Claims.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

Amendment of petition.—Filed Nov. 13, 1876.

From the first week in March, 1870, to the 15th day of July, 1870, the claimant's home was at Littleton, in the State of New Jersey, and he resided there during said period of time, and during said period there were no public quarters at said Littleton which could be furnished to the claimant.

PAINE & GRAFTON,
Claimant's Attorneys.

THE DISTRICT OF COLUMBIA, *ss:*

Benjamin F. Grafton, having been duly sworn, says he is one of claimant's attorneys, and believes the facts as stated in the foregoing amendment to be true.

BENJ. F. GRAFTON.

Sworn and subscribed before me, by B. F. Grafton, this 9th day of November, 1876.

[SEAL.]

JAS. S. EDWARDS,
Notary Public, D. C.

6 In the Court of Claims.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } 10883.

At a Court of Claims held at the Capitol in the city of Washington, the 9th day of January, A. D. 1877, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Frederick Phisterer, the claimant, have and recover of and from the United States the sum of five hundred and eighty-five dollars and twenty cents, ($585.20.)

By the court.

A true copy of record.

7 In the Court of Claims of the United States, Dec. term, 1876.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

From the judgment rendered in the above-entitled cause on January 9, 1877, in favor of claimant, the defendants, by their Attorney-General, on the 10th day of January, 1877, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Attorney-General.

Filed January 10, 1877.

Ordered that the appeal be allowed as prayed for.

By the court.

8 Court of Claims.

FREDERICK PHISTERER
vs.
THE UNITED STATES. } No. 10883.

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

1. The claimant being a captain of infantry in the Army of the United States from May, 1869, was, by special orders of Jan'y 7, 1870, from the Adjutant-General's Office, at his own request, ordered home to await orders, and left his post, Fort Bridger, Wyo., Jan'y 22, 1870. On Jan'y 31 & Feb'y 28, 1870, he reported as awaiting orders at New York City, and March 31, 1870, at Littleton, N. J. He was discharged the service at his own request Aug. 4, 1870.

9 The distance from Fort Bridger, Wyo., to New York City was 2,305 miles, & from Fort Bridger to Littleton, N. J., was 2,274 miles.

It does not otherwise appear where the claimant's home was, except that about the first of March, 1870, he was living in New York City, and at that time moved to Littleton, N. J., with his family, and continued to reside there, making it his home to the 15th of July following and subsequently.

2. While awaiting orders from Jan'y 31, 1870, to July 15, 1870, the claimant did not apply for quarters or fuel, and there were no quarters at New York City or Littleton, N. J., subject to the control of the Quartermaster's Department which could have been assigned to him.

The rate allowed by the War Department for commutation of officers' quarters was $18 a room per month. The commutation-price at
10 which fuel was commuted by the Department at New York City during February and March, 1870, was $7.29 per cord; and the market-price of wood at Littleton, N. J., from March 1 to July 15th, 1870, was $6 a cord.

3. Monthly reports were not received by the War Department from the claimant as required by the regulations of the Army; and it does not appear when he arrived at New York City, nor were his whereabouts known to the Department or proved in the case, except so far as those facts may appear to be inferred from the foregoing findings.

4. It does not appear that the claimant obtained or asked for permission to change his home or residence from New York City to Lit-
11 tleton, or that any objection was made by the War Department to his having done so.

CONCLUSIONS OF LAW.

1. The claimant was entitled to mileage while travelling from Fort Bridger to New York City, and to commutation while awaiting orders from Jan'y 31 to July 15, 1870, for quarters & fuel.

2. He should recover mileage for 2,305 miles, at 10 cents per mile	$232 50
For commutation for quarters while awaiting orders from Jan'y 31 to July 15, 1870, for 3 rooms, 5½ months, at $18 per month each room	297 00
For commutation for fuel at New York City, 2 months, 2½ cords per month, at $7.29 per cord	36 45
And at Littleton, N. J., 1 month, 2 cords, and 2½ months, ½ cord per month, at $6 per cord	19 25
By the court.	$585 20

12 In the Court of Claims.

FREDERICK PHISTERER *vs.* THE UNITED STATES. } No. 10883.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General, for the defendants, for the allowance of an appeal, as filed in the clerk's office January 10, 1877, and of the order of the Court of Claims allowing the same, of the findings of fact by the court, and the conclusion of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this eleventh day of January, 1877.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 963. The United States, appellants, *vs.* Frederick Phisterer. Court of Claims. Filed 11th January, 1877.